

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Sean B. Carroll *et al.*

Serial No.: 10/662,918

Group No.: 1644

Filed: 09/15/03

Examiner: Kim, Yunsoo

Entitled: Clostridial Toxin Disease Therapy

**APPEAL BRIEF REPLACEMENT PAGE
TRANSMITTAL IN RESPONSE TO
NOTICE OF NON-COMPLIANCE**

ATTENTION: Board of Patent Appeals and Interferences

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I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is, on the date shown below, being deposited with the U.S. Patent and Trademark Office, via EFS.

Dated: March 23, 2009

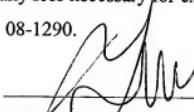

Traci B. Light

BPAI:

Applicants hereby submit replacement page 3 of the previously filed Appeal Brief to the Board of Appeals and Interferences, in response to the Notice of Non-Compliance mailed February 19, 2009. Applicants also submit a one-month extension of time and requisite fee.

Please charge any additional fees, including any fees necessary for extensions of time, or credit overpayment to Deposit Account No. 08-1290.

Dated: March 23, 2009


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I. REAL PARTY IN INTEREST

The real party in interest is Ophidian Pharmaceuticals, Inc., 2800 South Fish Hatchery Road, Madison, WI 53711.

II. RELATED APPEALS AND INTERFERENCES

There are no related applications pending appeal.

III. STATUS OF CLAIMS

Claims 1, 3-13 and 15-21 are rejected and are currently appealed. Claims 2 and 14 have been canceled.

IV. STATUS OF AMENDMENTS

All amendments in the case have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The first independent claim (Claim 1) recites a method for administering an antibody reactive with *Clostridium perfringens* (pg 6 ln 19), **comprising** providing a subject (pg 5 ln 27), and an orally administrable solution (pg 5 ln 26-27) comprising avian antibody reactive with *Clostridium perfringens*, and orally administering said solution to said subject (pg 5 ln 28). Dependent Claim 3 recites that said solution is in the form of a nutritional formula (pg 6, ln 22). Dependent Claim 4 recites that said nutritional formula comprises infant formula (pg 6, ln 22). Dependent Claim 5, recited that said subject is an animal (pg 5 ln 22). Dependent Claim 6 recites that said administering is prophylactic (pg 5 ln 30). Dependent Claim 7 recites that said administering is therapeutic (pg 5 ln 26).

The second independent claim (Claim 8) recites a method for administering an antibody reactive with *Clostridium perfringens* (pg 6 ln 19), **consisting essentially of** providing a subject (pg 5 ln 27), and an orally administrable solution (pg 5 ln 26-27) comprising avian antibody reactive with *Clostridium perfringens*, and orally administering said solution to said subject (pg 5 ln 28). Dependent Claim 9 recites wherein said solution is in the form of a nutritional formula (pg 6 ln 22). Dependent Claim 10 recites wherein said nutritional formula comprises infant formula (pg 6 ln 22).